

ESTTA Tracking number: **ESTTA464368**

Filing date: **03/29/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Barry Biondo		
Entity	Individual	Citizenship	UNITED STATES
Address	5704 Lago Del Sol Dr Lake Worth, FL 33449 UNITED STATES		

Attorney information	Wendy Peterson Not Just Patents PO Box 18716 Minneapolis, MN 55418 UNITED STATES WSP@NJPLS.COM Phone:(651) 500-7590
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Registration Subject to Cancellation

Registration No	3529699	Registration date	11/11/2008
Registrant	Nguyen, Thanh Suite 112 1037 State Road 7 Wellington, FL 33414 UNITED STATES		

Goods/Services Subject to Cancellation

Class 043. First Use: 2006/12/15 First Use In Commerce: 2006/12/15
All goods and services in the class are cancelled, namely: bar services

Grounds for Cancellation

Other	The mark does not function as a mark under 15 U.S.C. Â§Â§1051, 1052, 1053, and 1127 because the mark is used solely as a trade name; THE MARK DOES NOT CREATE A SEPARATE COMMERCIAL IMPRESSION AS A MARK functioning as a mark under Trademark Act Sections 1, 2, 3 and 45, 15 U.S.C. Â§Â§1051, 1052, 1053 and 1127; the term does not function as a mark under Trademark Act Sections 1, 2, 3 and 45, 15 U.S.C. Â§Â§1051, 1052, 1053 and 1127 because the drawing and the mark shown in the specimen do not agree; because the specimen does not show the mark functioning as a source designator for bar services under Trademark Act Sections 1, 2, 3 and 45, 15 U.S.C. Â§Â§1051, 1052, 1053 and 1127.
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Related Proceedings	91202097
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Attachments	Petition to Cancel TIPSy with exhibits.pdf (14 pages)(1181313 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Wendy Peterson/
Name	Wendy Peterson
Date	03/29/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No 3529699

For the mark “**TIPSY**”

Registered on November 11, 2008

Barry Biondo dba Tippy Spa and Salon

vs.

Thanh Nguyen

PETITION TO CANCEL

Petitioner: Barry Biondo DBA Tippy Spa and Salon

5704 Lago Del Sol Dr

Lake Worth FL 33449

The above-identified Petitioner believes that it will be damaged by continued registration of the mark shown in the above-identified application, and hereby petitions to cancel the same.

Based upon information and belief, Petitioner avers the following regarding the continued registration of the mark TIPSY:

1. Standing is not at issue: Petitioner’s application for the design trademark TIPSY SPA SALON SN 85272051 has been opposed by Registrant citing Registrant’s mark TIPSY as a basis. See the TSDR status record for TIPSY SPA SALON in Exhibit A. See TMBP 309.03(b) Standing.

2. Petitioner has shown standing on one ground, and now has the right to assert any other grounds in a Cancellation proceeding, See TMBP 309.03(b) Standing.
3. A record that supports the conclusion that Registrant's proposed mark was not in use, in this case not functioning as a mark or failing to function as a source designator, at the time of filing of its application supports that the application is void ab initio. *SHUTEMDOWN SPORTS, INC. v. LACY* (TTAB 2012).
4. Petitioner's grounds for this Petition to Cancel are related solely to the Registrant's mark as it stands on the Application File for SN 77093533 and does not deal with any of the issues in the civil proceeding or the opposition proceeding 91202097 other than to give Petitioner standing to bring this proceeding.
5. Registrant Thanh Nguyen applied for the standard character mark TIPSYP for the services *nail, hair cutting and spa services; bar services* in application SN 77093533 on January 29, 2007 under Section 1(a).
6. On July 9, 2008, Registrant amended the services to *bar services* in order to overcome a continuing likelihood of confusion refusal.
7. The application and specimen of use submitted by Registrant does not support the registration and is void ab initio for several independent grounds. Before there can be a registration, there must be a trademark. *In re Bose Corporation, d/b/a Interaudio Systems*, 546 F.2d 893, 192 USPQ 213, 215 (CCPA 1978).
8. MARK IS USED SOLELY AS A TRADE NAME. The subject matter for Registration 3529699 does not function as a mark (15 U.S.C. §§1051, 1052, 1053, and 1127) because the mark is used solely as a trade name (TMEP §1202.01).
9. Files described as "Digital photograph of advertisements" labeled as Specimen File 1 shown in Exhibit B1 and Specimen File 2 shown in Exhibit B2 were submitted with the application.
10. Specimen File 1 does not identify bar services.
11. Specimen File 1 identifies the business name, TIPSYP NAIL SPA AND SALON, and business address, like a letterhead and has no descriptive portion for *bar services*.
12. In Specimen File 1, neither TIPSYP nor TIPSYP NAIL SPA AND SALON is being used as a trademark for *bar services*. *In re Reinforced Molding Corporation*, 152 USPQ 820, 821 (TTAB 1967). *In re Monograms America, Inc.*, 51 USPQ2d 1317 (TTAB 1999).

13. Specimen File 1 causes the term TIPSYP to fail to function as a mark under Trademark Act Sections 1, 2, 3 and 45, 15 U.S.C. §§1051, 1052, 1053 and 1127. The registered *bar services* are not shown in any way.
14. In order to judge if specimen(s) of use shows a term functioning as a mark, one must looking at all the multiple uses of the term on the specimens, considering them individually and their entire impression. *In RE Supply Guys, Inc.* (TTAB 2008).
15. Specimen File 2 also fails to show the term TIPSYP functioning as a mark for *bar services*.
16. Specimen File 2 does not contain the terms TIPSYP Bar , TIPSYP Bar Services or even TIPSYP SPA AND SALON Bar Services.
17. Specimen File 2 does not contain the term TIPSYP with an term equivalent or representing bar services such as TIPSYP [plus term equivalent to bar], TIPSYP [plus term equivalent to bar services] or even TIPSYP SPA AND SALON [plus term equivalent to bar services].
18. Specimen File 2 does not contain the direct association between the alleged mark, TIPSYP, and the services for which registration is sought, *bar services*. *In re Adair*, 45 USPQ2d 1211 (TTAB 1997). Individually, Specimen File 2 also shows only trade name use or trademark use for nail services.
19. Specimen File 2 does not overcome the impression from Specimen File 1 to show any use except trade name use or trademark use for nail services.
20. The entire impression is that TIPSYP is a solely a trade name or a trademark for nail services. The application and registration for TIPSYP for bar services is void ab initio on this basis alone.
21. TIPSYP DOES NOT CREATE A SEPARATE COMMERCIAL IMPRESSION AS A MARK. Additionally and independently, Registrant's specimen of use does not show the term TIPSYP functioning as a mark under Trademark Act Sections 1, 2, 3 and 45, 15 U.S.C. §§1051, 1052, 1053 and 1127 because Registrant's specimen of use does not show TIPSYP in a commercial impression separately from TIPSYP NAIL SPA AND SALON in either specimen file. The size, appearance, and dominance of the word TIPSYP does not differentiate it from the commercial impression of the phrase TIPSYP NAIL SPA AND SALON. See TMEP 1202.03(a). TIPSYP is not used as a single

distinct term, it is used as an adjective in the trade name. NAIL SPA AND SALON are not descriptive or generic words for *bar services* and are a distinctive part of the commercial impression when used with TIPSYP. The terms TIPSYP and NAIL SPA AND SALON are not separable. *In re National Institute for Automotive Service Excellence*, 218 USPQ 745 (TTAB 1983).

22. TIPSYP does not function as a mark but rather as an inseparable part of the term TIPSYP NAIL SPA AND SALON with no distinct commercial impression for *bar services*. The application and registration for TIPSYP for bar services is void ab initio on this basis alone.
23. ‘TIPSYP NAIL SPA AND SALON’ (shown in specimen) IS AN IMPERMISSIBLE MUTILATION OF TIPSYP (shown in drawing). TIPSYP for *bar services* is in no way differentiated from the commercial impression of the phrase TIPSYP NAIL SPA AND SALON in Specimen File 1. See TMEP 1202.03(a). TIPSYP is not used as a single distinct term, it is used as an adjective in the trade name TIPSYP NAIL SPA AND SALON (or the trademark for nail services TIPSYP NAIL SPA AND SALON). The words NAIL SPA AND SALON are not descriptive or generic words for *bar services* and are therefore a distinctive part of the commercial impression when used with TIPSYP and are not separable. *In re National Institute for Automotive Service Excellence*, 218 USPQ 745 (TTAB 1983).
24. TIPSYP NAIL SPA AND SALON is an impermissible mutilation of the drawing of TIPSYP.
25. When the ‘drawing’ and specimen do not agree, the term does not function as a mark under Trademark Act Sections 1, 2, 3 and 45, 15 U.S.C. §§1051, 1052, 1053 and 1127. The application and registration for TIPSYP for bar services is void ab initio on this basis alone.
26. ‘NAIL’ IS AN IMPERMISSIBLE MUTILATION OF THE MARK ‘TIPSYP’
Specimen File 1 shows no trademark use of any term for *bar services*. (Exhibit B1.)
Specimen File 2 shows the term NAIL (Bar) as the only potential mark for bar services.
“For Your Enjoyment we offer a Nail Bar Serving Beer and Wine.”(Exhibit B2.)
27. This mention of Nail Bar is the only direct association between *bar services* to any potential mark in either specimen file.

28. NAIL, the only term in either specimen that shows any trademark use for bar services, is an impermissible mutilation of the mark in the drawing 'TIPSY'. When the 'drawing' and specimen do not agree, the mark does not function as a mark under Trademark Act Sections 1, 2, 3 and 45, 15 U.S.C. §§1051, 1052, 1053 and 1127.
29. TIPSY AS A TERM MERELY PROVIDES INFORMATIONAL MATTER. TIPSY in Specimen File 1 merely informs potential customers of the name of the business at a particular location.
30. TIPSY in Specimen File 2 merely informs potentials customers of multiple features of the TIPSY NAIL SPA AND SALON, that potential customers may feel tipsy if they drink while they are receiving spa or salon services and alternatively that nail services are services for the tips of their fingers.
31. Specimen File 2 supports both of these informational matters by showing a drinking glass with finger tips rising from the glass in close proximity to the phrase TIPSY NAIL SPA AND SALON.
32. Separately or together, Specimen Files 1 and 2 do not show TIPSY functioning as a source designator for *bar services* in a manner sufficient to imbue the term with source identifying significance to set it apart from the nail services or finger tip services offered by the business TIPSY NAIL SPA AND SALON. *In re Aerospace Optics, Inc.*, 78 USPQ2d 1861 (TTAB 2006). TIPSY fails to function as a source designator for bar services under Trademark Act Sections 1, 2, 3 and 45, 15 U.S.C. §§1051, 1052, 1053 and 1127. The application and registration for TIPSY for bar services is void ab initio on this basis alone.

The continuance of a federal registration for Registrant will unjustly harm Petitioner's rights in the mark. The four corners of the record, with no requirement for any facts outside this pleading, support the conclusion that Registrant's proposed mark was not in use, in this case not functioning as a mark and failing to function as a source designator, at the time of filing of the application. As such, the application is void ab initio. Petitioner respectfully requests that the Cancellation is sustained in favor of Petitioner.

Submitted By: /Wendy Peterson/

Date: March 29, 2012

Wendy Peterson, Attorney for Barry Biondo and Topsy Spa and Salon Inc.
Not Just Patents LLC
PO Box 18716
Minneapolis, MN 55418
WSP@NJPLS.COM

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2012, the foregoing was served upon

Registrant's attorney by first class mail to:

SCOTT KONOPKA

PAGE MRACHEK FITZGERALD & ROSE PA

1000 SE MONTEREY COMMONS BLVD, SUITE 306

STUART, FL 34996

By: /Wendy Peterson/

Date: March 29, 2012

Wendy Peterson, Attorney for Barry Biondo and Topsy Spa and Salon Inc.

Exhibit A

Latest Status Info (TSDR) TIPSYP SPA SALON SN 85272051

[STATUS](#) [DOCUMENTS](#)[Back to Search](#)[Print](#)**Mark:** TIPSYPASALON**US Serial Number:** 85272051**Application Filing Date:** Mar. 21, 2011**Register:** Principal**Mark Type:** Service Mark**Status:** An opposition after publication is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.**Status Date:** Oct. 14, 2011**Publication Date:** Sep. 20, 2011

Mark Information

Mark Literal Elements: TIPSYPASALON**Standard Character Claim:** No**Mark Drawing Type:** 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)**Description of Mark:** The mark consists of the term "TIPSY" above the terms "SPA ? SALON" with a linedrawing of a martini glass to the right.**Color(s) Claimed:** Color is not claimed as a feature of the mark.**Disclaimer:** "SPA" AND "SALON"**Design Search Code(s):** 11.03.15 - Champagne glasses;Glasses with stems;Goblets;Stemware (glasses);Wine glasses
26.01.02 - Circles, plain single line;Plain single line circles

Goods and Services

Note:

The following symbols indicate that the goods and services have been amended after registration of the Mark. Double parenthesis ((..)) identify any goods not claimed in Section 15 affidavit; Single brackets [...] indicate deleted goods; and, Single asterisks *..* identify additional (new) wording in the goods.

For: Day spa services, namely, nail care, manicures, pedicures and nail enhancements; Hair salon services, namely, hair cutting, styling, coloring, and hair extension services**Class Status:** 6 - ACTIVE**International Class:** 044**Basis:** 1(a)**First Use:** Feb. 01, 2008**Use in Commerce:** Feb. 01, 2008

Basis Information (Case Level)

Filed Use: Yes**Currently Use:** Yes**Amended Use:** No**Filed ITU:** No**Currently ITU:** No**Amended ITU:** No**Filed 44D:** No**Currently 44D:** No**Amended 44D:** No**Filed 44E:** No**Currently 44E:** No**Amended 44E:** No**Filed 66A:** No**Currently 66A:** No**Filed No Basis:** No**Currently No Basis:** No

Current Owner(s) Information

Owner Name: Biondo, Barry**DBA, AKA, Formerly:** DBA Tippy Spa and Salon**Owner Address:** 5704 Lago Del Sol Dr
Lake Worth, FLORIDA 33449
UNITED STATES**Legal Entity Type:** INDIVIDUAL**Citizenship:** UNITED STATES

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Daniel S. Polley**Docket Number:** 1351.7002**Correspondent****Correspondent** TIMOTHY L GRICE**Name/Address:** LAW OFFICE OF TIMOTHY L GRICE PA
319 CLEMATIS STREET SUITE 213
WEST PALM BEACH, FL 33401
UNITED STATES**Phone:** 561-802-4474**Fax:** 561-208-1303**Correspondent e-mail** Yes**Authorized:****Domestic Representative - Not Found****Prosecution History**

Date	Description	Proceeding Number
Nov. 23, 2011	TEAS CHANGE OF CORRESPONDENCE RECEIVEDY	
Oct. 14, 2011	OPPOSITION INSTITUTED NO. 999999	202097
Oct. 14, 2011	OPPOSITION PAPERS RECEIVED AT TTAB	
Sep. 20, 2011	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Sep. 20, 2011	PUBLISHED FOR OPPOSITION	
Aug. 12, 2011	LAW OFFICE PUBLICATION REVIEW COMPLETED	70138
Aug. 11, 2011	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 11, 2011	EXAMINER'S AMENDMENT ENTERED	88888
Aug. 11, 2011	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Aug. 11, 2011	EXAMINERS AMENDMENT E-MAILED	6328
Aug. 11, 2011	EXAMINERS AMENDMENT -WRITTEN	77300
Jul. 19, 2011	TEAS/EMAIL CORRESPONDENCE ENTERED	70138
Jul. 19, 2011	CORRESPONDENCE RECEIVED IN LAW OFFICE	70138
Jul. 12, 2011	ASSIGNED TO LIEY	70138
Jun. 30, 2011	ATTORNEY REVOKED AND/OR APPOINTED	
Jun. 30, 2011	TEAS REVOKE/APPOINT ATTORNEY RECEIVEDY	
Jun. 30, 2011	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 26, 2011	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jun. 26, 2011	NON-FINAL ACTION E-MAILED	6325
Jun. 26, 2011	NON-FINAL ACTION WRITTEN	77300
Jun. 19, 2011	ASSIGNED TO EXAMINER	77300
Mar. 25, 2011	NOTICE OF DESIGN SEARCH CODE MAILED	
Mar. 24, 2011	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Mar. 24, 2011	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information**TM Attorney:** CLAYTON, CHERYL A**Law Office Assigned:** LAW OFFICE 102**Current Location:** PUBLICATION AND ISSUE SECTION**Date in Location:** Aug. 12, 2011

Exhibit B1

Specimen File 1 for Application SN 77093533

HOURS:

MON TUES 9AM-9PM
WED THRU FRI 9AM-11PM
SAT 9AM-9PM
SUN 11AM-5PM

TIPSY

Nail Spa And Salon

ALL INSTRUMENTS ARE STERILIZED BY
STEAM AUTO CLAVE FOR A CLEAN &
HEALTHY ENVIRONMENT

ASK ABOUT SPECIAL EVENTS:

BACHELORETTE PARTIES
GIRLS NIGHT OUT
BABY SHOWERS
BIRTHDAYS
HOLIDAY PARTIES



7 STATE ROAD 7 SUITE 112 | WELLINGTON | FL | 33414 | TEL: 561-333-
IS LOCATED IN WELLINGTON RESERVE NORTH OF STATE RD 7 AND FOREST HILL RD BEHIND P. LOGAN'S

Exhibit B2

Specimen File 2 for Application SN 77093533

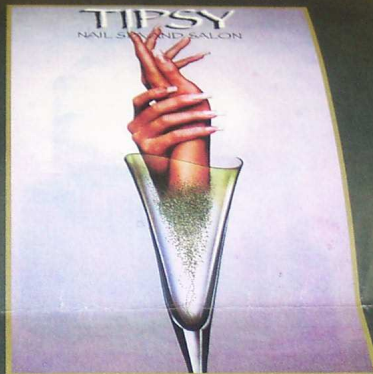
Tipsy Nail Spa and Salon

Services

*Lash Extensions • Permanent Make-Up • Massage
Hair Care • Manicures • Pedicures • Waxing • Facials*

We Specialize In

*Pink & Whites, Spa Manicures, Spa Pedicures and Acromassages
We Auto-Clave Sterilize All Our Instruments for
a Clean & Healthy Experience*



For Your Enjoyment we offer a Nail Bar Serving Beer & Wine

*Our Mission: Delivering the highest quality most
innovative nail care products and services in a unique,
affordable and fun atmosphere where you can relax and
unwind with a friend and enjoy a fine glass of wine.*

*Ask us about Special Events, Bachelorette Parties,
Girls Night Out, Birthday Parties and Holiday Parties*

Gift Certificates Available

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